

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

This submission is made in response to the Non-Final Office Action dated July 23, 2008. Claims 1-23 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claims 1, 12 and 23 are independent claims; the remaining claims are dependent claims. Claims 1-3, 6, 7, 10-14, 17, 18, and 21-23 have been rewritten.

On Wednesday, August 20, 2008, Applicants' representatives and one of the Inventors Joel L. Wolf, conducted a telephone interview with Examiner Zhe during which the pending claims and the applied art were discussed. While no agreement as to the claims was reached, it was however agreed that Examiner Zhe would telephone the undersigned prior to issuing a further action if the claims as presented herein were not in condition for allowance.

Applicants are not conceding in this application the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be

construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Summary of the Rejections

The rejections in the outstanding Office Action are as follows: claims 1, 12, and 23 stand rejected under 35 USC 102(b) as anticipated by Wolfinger et al., U.S. Patent No. 6,415,259 (hereinafter “Wolfinger”); claims 1, 12, and 23 also stand rejected under 35 USC 102(b) as anticipated by Abbott et al., U.S. Patent No. 6,314,463 (hereinafter “Abbott”); Claims 3 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abbott in view of “A Duality Approach to Admission and Scheduling Controls of Queues” to Susan H. Xu (hereinafter “Xu”); Claims 4-7, 10-11, 15-18, 21-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abbott in view of “Games, Critical Paths, and Assignment Problems in Permutation Flow Shops and Cyclic Scheduling Flow Line Environments” to Kiran (hereinafter “Kiran”); Claims 2, 8-9, 13, 19-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abbott in view of Crawford et al. (U.S. Patent No. 6,456,996) (hereinafter “Crawford”). Reconsideration and withdrawal of the rejections is hereby respectfully requested.

Before addressing the Examiner’s rejections, a summary follows which was taken from the Specification, and should provide the Examiner with a better understanding of the instantly claimed invention. The instantly claimed invention is directed to an improved method for providing plans and schedules which maximize profits when accommodating change management requests in a computing system. Change

Management is the process by which Information Technology (IT) systems are modified to accommodate considerations such as software fixes, hardware upgrades, and performance enhancements. (See e.g., Specification, pages 1-3).

The change management process typically starts with the submission of a Request For Change (RFC), which can be viewed as a job in scheduling terms. This RFC describes what is to be done, usually in terms of hardware/software artifacts to change (deploy, install, configure, uninstall), or it might also indicate the deadline by which the change needs to be completed. (Specification, page 1).

Change management is not a new concept, but the instantly claimed invention improves upon the existing methods for accomplishing change management. In the current state of the art Change Plans are created manually, not automatically. But this manual creation process is time consuming, difficult and error prone. For a large computing system it may be almost impossible. A need therefore exists for automating change management and this is the problem which the presently claimed invention addresses. (Specification, pages 1-3).

Rejections under 35 U.S.C. 102(b)

Claims 1, 12, and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wolfinger et al., U.S. Patent No. 6,415,259 (hereinafter “Wolfinger”), and also as anticipated by Abbott et al., U.S. Patent No. 6,314,463 (hereinafter “Abbott”). Reconsideration and withdrawal of these rejections is respectfully requested in light of the following.

In rejecting the aforementioned claimed subject matter the Examiner points to Wolfinger and Abbott as teaching various aspects of Applicants' claimed invention. Applicants maintain the arguments regarding the Wolfinger reference from the previous Amendment (submitted February 2008) and are hereby incorporated by reference as if set forth fully herein. Applicants further note the following regarding the teachings of the cited references and their inability to teach all of the limitations of the instantly claimed invention.

Applicants respectfully submit that, as best understood, Wolfinger's system is designed for the Telecom Industry and manages workflow, the workforce, and scheduling and optimization of workflow and the workforce based on multiple parameters. (Col. 4, Lines 15-22). To contrast, the present application is not directed to management of a workforce, but rather optimally scheduling and managing changes within Information Technology (IT) systems. Most importantly, Wolfinger fails to teach the concepts of a request for change (RFC) and job admission (i.e., whether a job will be done), or a change window as Wolfinger is a long-term scheduler.

With regard to the Abbott reference, as best understood, the reference appears to present a measurement method and is not a scheduler at all. In Abbott, the schedule is already set, and the teachings all point to measuring queue length. (See, e.g., Abbott, Col. 2, lines 8-15). In this case, not only does the reference fail to teach or suggest the features already pointed out as lacking in the Wolfinger reference above, but also appears to be wholly inapplicable to the instantly claimed invention.

Also, the changes referred to in Wolfinger and Abbott as compared to the present application are also very different. Wolfinger's changes refer to the changing internal and external factors such as changes in the orders being added, deleted, or modified and changes in the workforce situation due to sickness, or addition of new workers. (Col. 1, Lines 41-53). Abbott's changes appear to be directed to web server changes. The present application refers to scheduling the actual changes in the sense of when IT systems are modified to accommodate considerations such as software fixes, hardware upgrades and performance enhancements. (Specification, page 1, lines 9-11).

Further, the minimization of costs and the goals of optimization are very different between the cited references and the present application. Wolfinger aims to complete customer orders by optimizing a human workforce. Abbott looks to measurement of the performance of a web server through measuring queue lengths. In contrast, the present invention aims to optimize scheduling of the changes within a computing system through optimization of computer resources.

It is thus respectfully submitted that Wolfinger and Abbott fall short of the present invention. Applicants further respectfully submit that the applied art does not anticipate the present invention because, at the very least, “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction.” W.L. Gore & Associates, Inc. v. Garlock, 721 F.2d 1540, 1554 (Fed. Cir. 1983); see also In re Marshall, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

Nonetheless, solely in an effort to facilitate expeditious prosecution of the present application, Applicants have rewritten the independent claims to recite, *inter alia*,

wherein *the RFC describes at least one job to be done on at least one target computing system; wherein the at least one job is selected from a group consisting of hardware changes and software changes; and wherein the change window describes a period of time during which the RFC is to be done.*

Claim 1 (emphasis added). Claims 12 and 23 were amended to contain similar language. This language was intended to clarify that the concepts (i.e. request for change and change window) of the present invention, as already pointed out above, are not taught by either of the cited prior art references. The claims as rewritten find full support in the Specification as originally filed. (See e.g., Specification, pages 1-3). Applicants maintain that the teachings of Wolfinger and/or Abbott and any other reference of record and the state of the art fail to teach or suggest all of the elements of the independent claims as rewritten, and respectfully request that the rejections under §102(b) be withdrawn.

Rejections under 35 U.S.C. 103(a)

Claims 3 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abbott in view of “A Duality Approach to Admission and Scheduling Controls of Queues” to Susan H. Xu (hereinafter “Xu”); Claims 4-7, 10-11, 15-18, 21-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abbott in view of “Games, Critical Paths, and Assignment Problems in Permutation Flow Shops and Cyclic Scheduling Flow Line Environments” to Kiran (hereinafter “Kiran”); Claims 2, 8-9, 13, 19-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abbott in view

of Crawford et al. (U.S. Patent No. 6,456,996) (hereinafter “Crawford”). Reconsideration and withdrawal of the rejections is hereby respectfully requested

In rejecting the aforementioned claimed subject matter the Examiner points to Abbott, Xu, Kiran, and Crawford as teaching various aspects of Applicants’ claimed invention. Without addressing the substance of the rejections, although we reserve the right to do so should the need arise, Applicants respectfully submit that the cited prior art fails to provide for the shortcomings of the Abbott and Wolfinger references, as discussed above. It is therefore respectfully submitted that the § 103 rejections be withdrawn.

Request for Telephone Interview

Applicants again respectfully request (as discussed during the Examiner Interview) that if there are any issues remaining in the application following the Examiner’s consideration of this Amendment, that the Examiner kindly contact the Applicants’ representative at the below listed telephone number.

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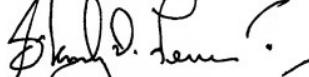
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Conclusion

In view of the foregoing, it is respectfully submitted that Claims 1, 12, and 23 fully distinguish over the applied art and are thus in condition for allowance. By virtue of dependence from what are believed to be allowable independent Claims 1 and 12, it is respectfully submitted that Claims 2-11, and 13-22 are also presently allowable. The teachings of Wolfinger and Abbott clearly fall short of the instantly claimed invention and neither Xu, Kiran, nor Crawford, nor the state of the art, accounts for these shortcomings.

In summary, it is respectfully submitted that the instant application, including Claims 1-23, is presently in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, *the Examiner is again invited to contact the undersigned at the telephone number listed below.*

Respectfully submitted,



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